



TC02612

Appeal number: TC/2012/05800

Income Tax – PAYE – insufficient tax deducted at source from taxpayer’s two pensions – whether First-tier Tribunal has jurisdiction to review a P800 form or HMRC’s discretion under ESC A19 – No – Appeal struck out in terms of Rule 8(2)(a) of the Tribunal Procedure Rules 2009

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT FLEMING

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE: KENNETH MURE, QC
S A RAE, LLB, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on Thursday
28 February 2013**

Appearing for the Appellant – no appearance

Mr William Kelly, Officer of HMRC, for the Respondents

DECISION

5 1. This appeal relates to the recovery through the PAYE system of outstanding tax of £463.40 due in respect of the Year 2010/11. The taxpayer, Mr Fleming, in terms of his Grounds of Appeal has challenged the calculation of this by HMRC in terms of P800 Form. The taxpayer has two pensions, both of which fall within PAYE. As a preliminary issue HMRC seeks to strike out the appeal under Rule 8(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) 10 Rules 2009 on the basis that the Tribunal does not have jurisdiction to entertain it.

15 2. Mr Kelly on behalf of HMRC submitted, firstly, that the Form P800 was not appealable, and further that the operation of the extra-statutory concession ESC A19 could not be reviewed by the Tribunal. He referred us helpfully to the decision of the First-tier Tribunal in *Prince & Others* (TC01852) and the decision of the UTT in *Hok Ltd* [2012] UKUT 363 (TCC). Having considered in particular paras 27 and 30 of *Prince*, we agree with Mr Kelly's submission that the status of a Form P800 is non-statutory and not akin to an assessment. Thus, it is not appealable before this Tribunal.

20 3. Further, we agree with Mr Kelly that this Tribunal cannot review HMRC's discretion under any ESC A19. Matters of fairness do not arise for our consideration.

25 4. For all of these reasons we allow HMRC's application to strike out these proceedings in terms of Rule 8(2)(a) on the basis that this Tribunal does not have jurisdiction to consider the issues raised in the Grounds of Appeal.

30 5. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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KENNETH MURE, QC
TRIBUNAL JUDGE

RELEASE DATE: 20 March 2013